



TOWN OF RIVERHEAD

DETERMINATION OF THE ZONING BOARD OF APPEALS

GRANTED
WITH CONDITIONS

APPEAL NO: 2021-051

SUMMARY: Reestablish Use for Three-Family Dwelling

APPLICANT/PROPERTY OWNER: Theresa Dilworth, 3755 Hallock Ln., Mattituck, NY 11952

RELIEF SOUGHT: for a use variance and/or relief from Chapter 301 Section 56 A where multi-family dwellings not permitted in Hamlet Center zoning; proposed three-family dwelling not permitted.

LOCATION: 992 E. Main Street, Riverhead

SCTM#: 600-106-4-7

ZONING DISTRICT: Hamlet Center (HC)

SIZE OF PROPERTY/REQUIRED SET BACKS: The property is approximately 21,842.5 sq. ft. or 0.50 acre. Minimum lot area is 5,000 square feet; minimum lot width on front street is 50 feet; maximum building lot coverage with and without sewer is 35%; maximum impervious surface is 60%; maximum height of buildings is 35 feet; maximum floor area ratio with and without sewer is 0.50; minimum front yard depth is 25 feet; minimum side yard depth for interior lots is 15 feet; minimum combined side yard depth for interior lots is 30 feet; minimum side yard depth facing side street on corner lot is 25 feet; minimum combined side yard depth for corner lot is 50 feet; minimum rear yard depth is 25 feet.

DATE OF HEARING: 12/9/2021

INSPECTION DATES: 12/7/21, 12/9/21

SUFFOLK COUNTY PLANNING COMMISSION: Pursuant to the Suffolk County Administrative Code Sections A14-14 to 23 referral of this matter to the Suffolk County Department of Planning and Development was not required.

SEQRA: The Zoning Board of Appeals has visited the property under consideration and reviewed the application and the Town's planning department determines that this review falls under Type II and does not require any further action pursuant to SEQRA.

PLEASE TAKE NOTICE that at the public hearings of the Town of Riverhead Zoning Board of Appeals on the above referenced dates, the above referenced appeal was heard, evidence placed into the record and the application was duly considered.

HISTORY/PROPERTY FACTS

1. Property was constructed in 1912 and has no certifications on record with the Building Department.
2. Town Assessor's property card identifies the structure's property class as 230, three family residence.
3. Application was made to the Building Department on March 22, 2021 for interior repairs due to water damage, reinforce/replace beams/studs as needed, fix attic floor and walls of enclosed porch, necessary structural replacement/repair of framing, floors, ceilings, new electric, plumbing, insulation, sheetrock, finishes and fixtures, convert first floor laundry room to attached greenhouse, and to reestablish three family use. A denial letter was sent from the Building Department on September 30, 2021, and an application was made to the Zoning Board of Appeals on October 18, 2021.
4. After reviewing the application, the history of the property and information gathered at the public hearing pursuant to the criteria set forth in Town Law 267-b this Board makes the following findings of fact:
 - a. The property is presently improved with the following structure(s):
 - i. Two-story frame residence with wood deck

- b. Testimony was received at the hearing. Theresa Dilworth, applicant, testified that the dwelling is an old historical house built in 1912 that was used as a three family residence for over one hundred years. As the use was abandoned in approximately 2016, the building deteriorated and fell into a dilapidated condition. Ms. Dilworth stated that she purchased the home with the intentions of renovating it; however, Hamlet Center zoning permits commercial use on the ground floor and apartments on upper floors only.
- c. Ms. Dilworth explained that her request to maintain the three family use is due to the parking and size of the property as “there isn’t a lot of parking for a restaurant or retail use.” She emphasized that parking for each residential unit may be one or two cars; whereas that for a commercial use, i.e. restaurant, bakery, or deli, requires more traffic movement involving ingress and egress of delivery trucks, employee parking, and customer parking.
- d. In furtherance of the merit of this application, Ms. Dilworth stated that more substantial, and infinitely more expensive renovation would be necessary to convert the first floor residential apartment to a commercial use. If granted the continued use as a three family dwelling, the floor plans will remain the same, and only the need for repair and upgrading will be required. The relief sought is unique and does not apply to a substantial portion of the district.
- e. Ms. Dilworth addressed the character of the surrounding area, stating neighboring properties include multi-family homes and some commercial uses; therefore, maintaining a three family use creates no negative impact on the character of the community.
- f. James Peterson offered sworn testimony at the public hearing. Mr. Peterson stated that he owns the apartments adjacent to the subject property. His relatives used to live in the home that Ms. Dilworth purchased and as long as he remembers it was always a three family unit. Mr. Peterson added that three separate electric meters had always been there, and he supports the application.
- g. Affidavits from Helen Peterson and Helen Tyte Peterson, included as part of the record, support the history of the building and the granting of the application.
- h. As a result, Ms. Dilworth believes the reestablishment of the use is appropriate for the area, and requests that the Board grant the variance.

FINDINGS: The evidence in the record establishes that weighing the benefit of granting the variance request against the detriment of granting the variance request to the health, safety and welfare of the community and finds as follows:

The applicant is seeking a Use Variance to reestablish the use of a preexisting three family dwelling that has been abandoned for more than one year. Affidavits in support from previous residents of the subject property and sworn testimony from a neighboring property owner, along with the Town of Riverhead Assessor’s property card, sustain the essence of the application.

DETERMINATION:

The evidence in the record establishes that weighing the benefit of granting the use variance request against the detriment of granting the use variance request to the health, safety and welfare of the community and finds as follows:

1. The variance sought cannot realize a reasonable return for each of the permitted uses in the zoning district in which the subject property is located as the cost of conversion to commercial use, upgraded parking, and façade modifications would trigger a site plan application. Applicant’s proposal to maintain a three family dwelling, as it has existed since 1912, is more financially feasible. Additionally, several commercial properties in this area along East Main Street are vacant and/or dilapidated; advertising and obtaining tenants will likely create a financial loss for the applicant.

2. The alleged hardship relating to the property is unique and does not apply to a substantial portion of the district or neighborhood since the subject property has existed as a three family dwelling for many decades and lost its use as the home was abandoned for over one year.
3. The use variance would not alter the essential character of the neighborhood since the neighborhood includes similar uses and the use proposed fits into the overall mixed uses located along East Main Street in the vicinity of the subject property.
4. The alleged hardship was not self-created as the applicant purchased the dwelling after the previous owner abandoned the use.

The motion was made by Mr. Wittmeier and seconded by Mr. Zaweski, that the aforementioned determination be approved:

THE VOTE

**MR. ZAWESKI: AYE MR. BARNES: AYE
MR. GAZZILLO: AYE MR. WITTMEIER: AYE
MR. MCLAUGHLIN: ABSENT**

**This determination X was was not
therefore duly adopted**

Based upon the foregoing, the area variance is **GRANTED** and, if granted, is subject to the following conditions which, based upon the evidence presented, will minimize the adverse impacts that the variance would have on the community or district as identified above.

CONDITIONS

- 1. Must be compliant with all applicable New York State and Town Codes, including requirement to obtain a rental permit.**

If this is an approval, it is necessary that you take this duplicate original letter with you to the Building Department when applying for a Building Permit. Pursuant to Riverhead Town Code §105-8(D), any determination made by the Zoning Board of Appeals shall not become effective unless a permit is obtained in accordance herewith within one year of the date of such determination, unless the Zoning Board of Appeals has stipulated a different period of time in its determination. The Zoning Board of Appeals shall have the power, by resolution, to extend its determination for a period of one year upon written notice from the applicant or his agent of the desire to do so. No more than three such extensions shall be allowed. The provisions of this subsection shall not apply in cases of interpretation of variances for the use of land unless the Zoning Board of Appeals has indicated a time period in the determination. Failure to comply therewith will render this approval null and void. In the event that this is an approval subject to conditions, the approval shall not be deemed effective until such time that the foregoing conditions are met. **This determination shall expire on January 13, 2023.**

Dated: 1/25/22

Very truly yours,



Fred McLaughlin, Chairman
ZONING BOARD OF APPEALS



TOWN OF RIVERHEAD

GRANTED

DETERMINATION OF THE ZONING BOARD OF APPEALS

APPEAL NO: 2021-054

SUMMARY: Legalize Wrap-around Deck

APPLICANT/PROPERTY OWNER: Gina Rubinstein, 54 Cedar Street, Aquebogue, NY 11931

RELIEF SOUGHT: for variances and/or relief from Chapter 301 Section 17 where existing front yard deck setback is 11.1 ft. and minimum required is 50 ft.; where existing side yard deck setback is 15.1 ft. and minimum required is 25 ft.; where existing rear yard deck setback is 25.1 ft. and minimum required is 60 ft.; and where existing setback from deck to garage is 0 ft. and minimum required is 10 ft.

LOCATION: 54 Cedar Street, Aquebogue

SCTM#: 600-113-2-73

ZONING DISTRICT: Residence B-40 (RB40)

SIZE OF PROPERTY/REQUIRED SET BACKS: The property is approximately 5,325 sq. ft. or 0.122 acres. Minimum lot area is 40,000 square feet; minimum lot width is 150 square feet; maximum impervious coverage is 15%; maximum height of residential buildings is 35 feet; minimum front yard depth is 50 feet; minimum either side yard width is 25 feet; minimum both side yards, total width is 55 feet; minimum side yard abutting side street is 50 feet; minimum rear yard depth is 60 feet. Accessory in side yard setback is 20 feet. Accessory in rear yard setback is 20 feet. Accessory setback to side/rear street line is 50 feet.

DATE OF HEARING: 1/13/2022

INSPECTION DATES: 1/8/2022, 1/10/2022

SUFFOLK COUNTY PLANNING COMMISSION: Pursuant to the Suffolk County Administrative Code Sections A14-14 to 23 referral of this matter to the Suffolk County Department of Planning and Development was not required.

SEQRA: The Zoning Board of Appeals has visited the property under consideration and reviewed the application and the Town's planning department determines that this review falls under Type II and does not require any further action pursuant to SEQRA.

PLEASE TAKE NOTICE that at the public hearings of the Town of Riverhead Zoning Board of Appeals on the above referenced dates, the above referenced appeal was heard, evidence placed into the record and the application was duly considered.

HISTORY/PROPERTY FACTS

1. Property received the following certifications:
 - a. Certificate of Occupancy (ZB17039) dated August 22, 1994 for repair of bilco door and porch
 - b. Letter of PreExisting Use (LPEU) dated October 6, 1997 for one-story frame single family dwelling with rear porch, bilco door and one car detached garage
2. Application was made to the Building Department on September 15, 2021 for a second floor, relocate two bedrooms, add two full baths, roof over front porch, new rear stoop and legalize wrap-around deck. A denial letter was sent from the Building Department on October 5, 2021, and an application was made to the Zoning Board of Appeals on November 3, 2021.
3. After reviewing the application, the history of the property and information gathered at the public hearing pursuant to the criteria set forth in Town Law 267-b this Board makes the following findings of fact:
 - a. The property is presently improved with the following structure(s):
 - i. One-story frame house

- ii. Frame deck (to be legalized)
- iii. Detached garage

FINDINGS: The evidence in the record establishes that weighing the benefit of granting the area variance request against the detriment of granting the area variance request to the health, safety and welfare of the community and finds as follows:

1. The variance sought would not produce an impact on adjacent properties or the neighborhood as the deck has existed in place for years and has had no negative impacts on the community. Application for building permit to relocate bedrooms and add baths triggered legalization of the wrap-around deck.
2. The requested variance is not substantial because the lot is undersized, preexisting nonconforming and would require relief from this board for even minor additions.
3. The benefit sought by the applicant cannot be achieved by some alternative means because the application is to legalize an existing deck that previous owners installed.
4. The requested variance will not have an adverse impact on the physical or environmental conditions in the neighborhood/district as it is a structure allowed per the residential zoning and typical of single family homes in the area.
5. The alleged difficulty that the property owner is experiencing was not self-created as the previous homeowners constructed the deck without the benefit of a building permit.

DETERMINATION:

The Board has carefully reviewed and considered all of the testimony and evidence submitted in connection with the application as well as the findings set forth above. After this careful review, the board hereby determines that benefit of granting the area variance request when balanced against the detriment of granting the area variance request to the health, safety and welfare of the community, **weighs in favor of granting the application.**

The motion was made by Mr. Wittmeier and seconded by Mr. Gazzillo, that the aforementioned determination be approved:

THE VOTE

**MR. ZAWESKI: AYE MR. BARNES: AYE
MR. GAZZILLO: AYE MR. WITTMEIER: AYE
MR. MCCLAUGHLIN: ABSENT**

**This determination X was ___ was not
therefore duly adopted**

Based upon the foregoing, the area variance is **GRANTED** and, if granted, is subject to the following conditions which, based upon the evidence presented, will minimize the adverse impacts that the variance would have on the community or district as identified above.

NO CONDITIONS

If this is an approval, it is necessary that you take this duplicate original letter with you to the Building Department when applying for a Building Permit. Pursuant to Riverhead Town Code §105-8(D), any determination made by the Zoning Board of Appeals shall not become effective unless a permit is obtained in accordance herewith within one year of the date of such determination, unless the Zoning Board of Appeals has stipulated a different period of time in its determination. The Zoning Board of Appeals shall have the power, by resolution, to extend its determination for a period of one year upon written notice from the applicant or his agent of the desire to do so. No more than three such extensions shall be allowed. The provisions of this subsection shall not apply in cases of interpretation of variances for the use of land unless the Zoning Board of Appeals has indicated a time period

in the determination. Failure to comply therewith will render this approval null and void. In the event that this is an approval subject to conditions, the approval shall not be deemed effective until such time that the foregoing conditions are met. **This determination shall expire on January 13, 2023.**

Dated: 1/25/22

Very truly yours,

A handwritten signature in black ink, appearing to read "Fred McLaughlin", written in a cursive style.

Fred McLaughlin, Chairman
ZONING BOARD OF APPEALS



TOWN OF RIVERHEAD

GRANTED

DETERMINATION OF THE ZONING BOARD OF APPEALS

APPEAL NO: 2021-055

SUMMARY: Detached Three Car Garage in Front Yard

APPLICANT/PROPERTY OWNER: Dawn Vogel, 2 Cherry Lane, Wading River, NY 11792

RELIEF SOUGHT: |for variances and/or relief from Chapter 301 Section 29 where proposed detached garage with 2nd level is in front yard which is not permitted.

LOCATION: 2 Cherry Lane, Wading River

SCTM#: 600-26-2-1.2

ZONING DISTRICT: Residence B-80 (RB80)

SIZE OF PROPERTY/REQUIRED SET BACKS: The property is approximately 92,347 sq. ft. or 2.12 acres. Minimum lot area is 80,000 square feet; minimum lot width is 175 square feet; maximum impervious coverage is 15%; maximum height of residential buildings is 35 feet; minimum front yard depth is 60 feet; minimum either side yard width is 30 feet; minimum both side yards, total width is 65 feet; minimum side yard abutting side street is 60 feet; minimum rear yard depth is 75 feet; accessory in side yard setback is 25 feet; accessory in rear yard setback is 20 feet; accessory setback to side/rear street line is 60 feet.

DATE OF HEARING: 1/13/2022

INSPECTION DATES: 1/8/2022, 1/10/2022

SUFFOLK COUNTY PLANNING COMMISSION: Pursuant to the Suffolk County Administrative Code Sections A14-14 to 23 this matter was referred to the Suffolk County Department of Planning and Development, and by letter dated November 22, 2021 the project was deemed a matter for local determination.

SEQRA: The Zoning Board of Appeals has visited the property under consideration and reviewed the application and the Town's planning department determines that this review falls under Type II and does not require any further action pursuant to SEQRA.

PLEASE TAKE NOTICE that at the public hearings of the Town of Riverhead Zoning Board of Appeals on the above referenced dates, the above referenced appeal was heard, evidence placed into the record and the application was duly considered.

HISTORY/PROPERTY FACTS

1. Property received the following certifications:
 - a. Certificate of Occupancy dated April 26, 1983 for single family residence
 - b. Certificate of Occupancy (ZB24225) dated April 14, 2016 for four additions and interior alterations to a single family residence
 - c. Certificate of Occupancy (ZB 160295) dated March 21, 2017 for additions & alteration to residence—four bedrooms, three and one-half bathrooms, two-car garage under with unfinished basement
 - d. Certificate of Compliance (16-1001) dated April 13, 2017 for residential underground propane tank & gas line
 - e. Certificate of Compliance (18-0509) dated July 24, 2018 for bulkhead/dock 139' stone revetment per Chapter 219 PB Resolution 2018-045
 - f. Certificate of Occupancy (19-0821) dated January 22, 2020 for in-ground pool 17' x 34' with spa and propane heater

2. Application was made to the Building Department on October 4, 2021 to construct a two-story detached three car garage with roofed over rear entry. A denial letter was sent from the Building Department on October 4, 2021, and an application was made to the Zoning Board of Appeals on November 5, 2021.
3. After reviewing the application, the history of the property and information gathered at the public hearing pursuant to the criteria set forth in Town Law 267-b this Board makes the following findings of fact:
 - a. The property is presently improved with the following structure(s):
 - i. Two-story frame, brick and stone residence
 - ii. In-ground pool with hot tub
 - iii. Covered porch

FINDINGS: The evidence in the record establishes that weighing the benefit of granting the area variance request against the detriment of granting the area variance request to the health, safety and welfare of the community and finds as follows:

1. The variance sought would not produce an impact on adjacent properties or the neighborhood as the garage will not be visible to the neighbors, and the structure exceeds any required setbacks for accessory structures.
2. The requested variance is not substantial as the property is situated on the Long Island Sound; it is not uncommon for accessory structures to be located in the front yard.
3. The benefit sought by the applicant cannot be achieved by some alternative means as though the garage is proposed in the front yard, situating the structure in the rear yard is impractical and would also require setback relief from this Board. Applicant is a car enthusiast and testified that additional storage for classic cars is ideal.
4. The requested variance will not have an adverse impact on the physical or environmental conditions in the neighborhood/district as the proposed is an accessory structure in a residential neighborhood. No trees shall be removed, and there shall be minimal land disturbance for the installation of the concrete slab.
5. The alleged difficulty that the property owner is experiencing was self-created; however, that fact does not prohibit this board from granting the relief sought.

DETERMINATION:

The Board has carefully reviewed and considered all of the testimony and evidence submitted in connection with the application as well as the findings set forth above. After this careful review, the board hereby determines that benefit of granting the area variance request when balanced against the detriment of granting the area variance request to the health, safety and welfare of the community, **weighs in favor of granting the application.**

The motion was made by Mr. Gazzillo and seconded by Mr. Barnes, that the aforementioned determination be approved:

THE VOTE

MR. ZAWESKI: AYE MR. BARNES: AYE
MR. GAZZILLO: AYE MR. WITTMEIER: AYE
MR. MCLAUGHLIN: ABSENT
This determination X was ___ was not
therefore duly adopted

Based upon the foregoing, the area variance is **GRANTED** and, if granted, is subject to the following conditions which, based upon the evidence presented, will minimize the adverse impacts that the variance would have on the community or district as identified above.

NO CONDITIONS

If this is an approval, it is necessary that you take this duplicate original letter with you to the Building Department when applying for a Building Permit. Pursuant to Riverhead Town Code §105-8(D), any determination made by the Zoning Board of Appeals shall not become effective unless a permit is obtained in accordance herewith within one year of the date of such determination, unless the Zoning Board of Appeals has stipulated a different period of time in its determination. The Zoning Board of Appeals shall have the power, by resolution, to extend its determination for a period of one year upon written notice from the applicant or his agent of the desire to do so. No more than three such extensions shall be allowed. The provisions of this subsection shall not apply in cases of interpretation of variances for the use of land unless the Zoning Board of Appeals has indicated a time period in the determination. Failure to comply therewith will render this approval null and void. In the event that this is an approval subject to conditions, the approval shall not be deemed effective until such time that the foregoing conditions are met. **This determination shall expire on January 13, 2023.**

Dated: 1/25/22

Very truly yours,



Fred McLaughlin, Chairman

ZONING BOARD OF APPEALS